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RUEHKP/AMCONSUL KARACHI PRIORITY 8407
RUEHLH/AMCONSUL LAHORE PRIORITY 4351
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C O N F I D E N T I A L SECTION 01 OF 02 ISLAMABAD 005289

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TAGS: [PGOV](#) [PK](#) [PREL](#)

SUBJECT: PAKISTAN: STATE OF EMERGENCY LIFTED

REF: A. ISLAMABAD 4990

[1](#)B. ISLAMABAD 5192

Classified By: Anne W. Patterson, Reasons 1.4 (b), (d)

[1](#)1. (U) Summary: As promised, President Musharraf has lifted the State of Emergency (SOE) and restored the constitution; he addresses the nation at 2000 local tonight. The January 8 general elections can now proceed under an established legal framework. However, the effects of the SOE linger on in the form of continued curbs on the media (Geo TV is still off the air) and restrictions on political gatherings. The deposed judges and key politicians such as Aitzaz Ahsan remain under house arrest. Musharraf also issued an order amending the National Command Authority to ensure that he, as President, will control Pakistan's nuclear weapons. The Attorney General claims that this week's amendments to the constitution provide Musharraf with immunity for his recent actions, but it is possible that the next government will revisit the legality of the SOE, the Provisional Constitutional Order and the firing of Supreme and High Court judges. Thus, the election results will continue to be critical in determining Musharraf's future and Pakistan's uneven progress towards democracy. End summary.

New Orders

[1](#)2. (U) On December 15, President Musharraf lifted the state of emergency, which he imposed late November 3 in his capacity as (then) Chief of Army Staff. Pakistan's Attorney General Malik Qayyum announced that the new orders included the concurrent Repeal of the November 3 State of Emergency (SOE), Provisional Constitution Order (PCO) and Revival of Constitutional Order. Musharraf is scheduled to address the nation at (local) 2000 hours.

[1](#)3. (SBU) Before giving up his unfettered powers, however, Musharraf introduced six more amendments to Pakistan's constitution. Two of these new amendments are in response to the opposition's previous legal challenges to Musharraf's re-election. The first amendment sanctions Musharraf's October 6 re-election before the National Assembly whose term expired on November 15. The opposition had argued in court that Musharraf could only be elected by the newly elected National Assembly. The second amendment makes clear that Musharraf's new five-year term will count as his second (not third) time in office; again, the opposition had claimed in

court that Musharraf had already served two terms and was therefore ineligible to serve a third term.

¶4. (C) The other four amendments are directly related to Pakistan's judiciary: (1) reiterating the establishment of an Islamabad High Court; (2) related details on appointments to the new Islamabad bench; (3) lowering the minimum age requirement from 45 to 40 for High Court judges; and (4) confirming all new judicial appointments made under the PCO. Judges who have ceased to hold office because they did not take an oath to the PCO will receive a pension and other benefits available to other judges. Creating another court in Islamabad would relieve pressure on a crowded high court docket in Rawalpindi and allow the government to control the appointment of another high court justice. The Attorney General admitted the government was having trouble filling the positions of deposed justices; lowering the age limit will make that process easier. The deposed justices had argued that lifting the PCO would restore them to the bench, but amendment (4) makes clear that they have been definitively removed.

¶5. (C) Those judges who took office after having taken an oath to the PCO have now re-taken an oath, this time to the constitution. On December 10, Musharraf added three more judges to the Supreme Court, raising the total number of justices on the reconstituted bench to 14. Justices Mian Hamid Farooq and Syed Sakhi Hussain Bokhari have been brought up from the Lahore High Court. Justice Syed Zawwar Hussain Jaffrey was brought out of retirement from the Sindh High Court. Under precedence, the Supreme Court has contained 17 justices, so more judges may be added.

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Immunity for Musharraf

¶6. (C) As noted in Ref A, the Attorney General has claimed that constitutional amendments promulgated on November 21 ensure that President Musharraf will not have to seek a two-thirds parliamentary ratification of his extra-constitutional actions on and since November 3.

Fundamental Rights Restored?

¶7. (C) According to public and private statements by Qayyum, Musharraf's orders would restore all constitutionally-protected "fundamental rights" and that all remaining political detainees would be released. Former Punjab Chief Minister Pervaiz Elahi told CG Lahore that Aitzaz Ahsan would be released from house arrest December 15, but this has not yet occurred. The deposed Supreme Court justices, including former Chief Justice Iftikhar Chaudhry, remain confined under house arrest "to ensure the maintenance of public order."

¶8. (U) Despite lifting of the SOE, Geo TV remains off the air.

Nuclear Powers Asserted

¶9. (C) On December 14, Musharraf used his extra-constitutional powers to strengthen his powers as President to control Pakistan's nuclear weapons. He issued an ordinance providing a legal mandate for the National Command Authority (NCA) and ensuring that the President commands the NCA. The NCA was established in 2000 to provide a series of controls over Pakistan's special (nuclear) weapons programs. The NCA as created includes an Employment Control Committee and a Development Control Committee, both chaired by the head of government (technically, the Prime Minister although Musharraf has been acting in that capacity within the NCA). The Special Programs Division (SPD), headed

by a military general, acts as the NCA's secretariat and implements the policies established by the NCA. Musharraf's new ordinance gives the head of state (President) the chairmanship of both committees.

¶10. (C) Comment: The good news is that Musharraf has followed through on his promise to lift the SOE and restore the constitution. Musharraf and his party now hope that elections which will take place under the established legal framework can be considered credible. The effects of the SOE linger on, however, in the form of continued repression of the media and limits imposed on political gatherings. Depending on the election results, the next government could revisit the legality of the SOE, the PCO and Musharraf's decision to replace Supreme and High Court judges. Musharraf's decision to ensure he as President retains control of Pakistan's nuclear weapons could set up a confrontation with the next Prime Minister over defense and foreign policy, but the nukes have always been, and remain, under the control of the Pakistan Army.

PATTERSON